

REMARKS

In an Office Action mailed September 13, 2001, the Examiner rejects all claims under 35 U.S.C. §101 over Applicant's earlier Patent No. 6,002,982. The Examiner claims that the present application claims the same invention as the issued patent. Applicant respectfully disagrees with this conclusion.

The present application includes four claims, of which claim 1 is independent. Claim 1 is directed to a version of the present invention "adapted for use with a remote computer accessible through a network" (emphasis added). Along these lines, claim 1 provides that the sports activity monitor includes an interface between the mobile recording unit and the remote computer, which enables the computer to display, over the network, certain information. The invention claimed in the issued patent includes an interface without this capability. Therefore, this is not an identical invention. Applicant submits that for the rejection to be properly made, the claims must be directed to exactly the same invention. This is not the case with the present application. In fact, the present application is a continuation-in-part rather than a continuation application.

According to the Manual of Patent Examining Procedure, §804, "a reliable test for double patenting under 35 U.S.C. §101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim of the patent. The distinction between a remote computer accessed through a network and a system that is not operable to use the network meets this test.

Applicant submits that all claims are in condition for allowance and respectfully requests



favorable action. Questions regarding this application should be directed to the undersigned attorney at the telephone and facsimile numbers provided.

Respectfully submitted,

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